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Sequence Number: \_\_\_\_\_

Notice ID(s): \_\_\_\_\_

File Date: \_\_\_\_\_

# Notice of Rulemaking Hearing

*Hearings will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204. For questions and copies of the notice, contact the person listed below.*

|                                 |   |
|---------------------------------|---|
| <b>Agency/Board/Commission:</b> | Tennessee Department of Human Services  |
| <b>Division:</b>                | Medical Services  |
| <b>Contact Person:</b>          | Phyllis Simpson   |
| <b>Address:</b>                 | Office of General Counsel<br>Citizens Plaza Building, 10 <sup>th</sup> Floor<br>400 Deaderick Street<br>Nashville, Tennessee 37243-1403 |
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*Any Individuals with disabilities who wish to participate in these proceedings (to review these filings) and may require aid to facilitate such participation should contact the following at least 10 days prior to the hearing:*

|                     |   |
|---------------------|---|
| <b>ADA Contact:</b> | Jeffrey Blackshear  |
| <b>Address:</b>     | Office of General Counsel<br>Citizens Plaza Building, 10 <sup>th</sup> Floor<br>400 Deaderick Street<br>Nashville, Tennessee 37243-1403 |
| <b>Phone:</b>       | 615-313-4731  |
| <b>Email:</b>       | jeffrey.blackshear@state.tn.us  |

**Hearing Location(s)** (for additional locations, copy and paste table)

|                |   |
|----------------|---|
| Address 1:     | Citizens Plaza Building<br>2 <sup>nd</sup> Floor Board Room<br>400 Deaderick Street |
| Address 2:     |   |
| City:          | Nashville, Tennessee  |
| Zip:           | 37243-1403  |
| Hearing Date : | 05/27/09  |
| Hearing Time:  | 1:30 PM   |
|                | <input checked="" type="checkbox"/> X CST <input type="checkbox"/> EST              |

**Additional Hearing Information:**

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|--|

**Revision Type (check all that apply):**

☒ Amendment  
☐ New  
☐ Repeal

**Rule(s)** (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables. Please enter only **ONE** Rule Number/RuleTitle per row.)

| <b>Chapter Number</b> | <b>Chapter Title</b> |
|-----------------------|----------------------|
| 1240-03-01            | General Rules        |
| <b>Rule Number</b>    | <b>Rule Title</b>    |
| 1240-03-01-.02        | Definitions          |

| <b>Chapter Number</b> | <b>Chapter Title</b>                |
|-----------------------|-------------------------------------|
| 1240-03-02            | Coverage Groups Under Medicaid      |
| <b>Rule Number</b>    | <b>Rule Title</b>                   |
| 1240-03-02-.02        | Coverage of the Categorically Needy |

| <b>Chapter Number</b> | <b>Chapter Title</b>  |
|-----------------------|---|
| 1240-03-03            | Technical and Financial Eligibility Requirements for Medicaid |
| <b>Rule Number</b>    | <b>Rule Title</b>   |
| 1240-03-03-.03        | Resource Limitations for Categorically Needy                  |
| 1240-03-03-.04        | Income Limitations for the Categorically Needy                |

## Substance of Proposed Rules

### Chapter 1240-03-01 General Rules

#### Amendments

Rule 1240-03-01-.02 Definitions, is amended by inserting "Joint Custody", "Qualified Disabled and Working Individual (QDWI)", "Qualified Medicare Beneficiary (QMB)", "Qualifying Individual 1 (QI1)" and "Specified Low-Income Medicare Beneficiary (SLMB)" alphabetically as new subparagraphs under Paragraph (1) and by renumbering the existing subparagraphs, including, the currently in the rule process to take effect May 10, 2009 definitions of (c) "Caretaker Relative" and (w) "Qualified Long Term Care Insurance Policy", so that, as amended, Paragraph (1), subparagraphs (a) through (bb) shall read as follows:

#### 1240-3-1-.02 Definitions.

- (1) Definitions of terms or phrases utilized in regulations relating to the Medical Assistance Program are as follows:
  - (a) Aid to Families with Dependent Children (AFDC). Refers to the name of the cash assistance program for Families and Children prior to the passage of the Welfare Reform Act in July 1996.
  - (b) Aid to Families with Dependent Children – Medicaid Only (AFDC-MO (Section 1931)). Refers to Section 1931 of the Social Security Act [42 U.S.C. § 1396u-1] which requires that any family group that qualifies for Medicaid based on AFDC-MO regulations prior to July 16, 1996 be tested for eligibility in this group.
  - (c) Caretaker relative: The father, mother, grandfather or grandmother of any degree, brother or sister of the whole or half-blood, stepfather, stepmother, stepbrother, stepsister, aunt or uncle of any degree, first cousin, nephew or niece, the relatives by adoption within the previously named classes of persons, and the biological relatives within the previous degrees of relationship, and the legal spouses of persons within the previously named classes of persons, even if the marriage has been terminated by death or divorce, with whom a child is living. A Caretaker relative may be included in the AFDC-MO Category if he/she is related in the previous degrees of relationship with a child in the home who is under age eighteen (18) years of age or a child who has not attained nineteen (19) years of age and who is a full-time student in a secondary school or the equivalent and who is expected to graduate by the nineteenth birthday. [TCA § 71-3-153]
  - (d) Categorically Needy. Categorically Needy individuals are entitled to the broadest scope of medical assistance benefits. All recipients of Medicaid based on Section 1931-AFDC-MO and the SSI program for the aged, blind or disabled are Categorically Needy. In addition, many adults, families, pregnant women and children who do not receive cash assistance receive the Categorically Needy level of benefits for Medicaid Only assistance.
  - (e) Code of Federal Regulations (C.F.R.). Federal regulations which transfer to regulatory form the specific requirements of Federal law.
  - (f) Co-insurance. Coinsurance amounts payable by the recipient under the provisions of Title XVIII, Part B for covered medical services rendered under

the Medicare Program and becoming due after satisfaction of the deductible liability. [42 U.S.C. §§ 1395] et seq.]

- (g) Deductible. Amounts payable by the recipient which fall within an aged beneficiary's deductible liability imposed by Title XVIII, Part B. Health Insurance for the Aged. [42 U.S.C. §§ 1395] et seq.]
- (h) Eligible individual. A person who has applied for medical assistance and has been found to meet all applicable conditions for eligibility pertaining to Tennessee's Medical Assistance Program.
- (i) Excess income. That portion of the income of the individual or family group, which exceeds amounts allowable to the individual or family group as disregarded income or income protected for basic maintenance and which results in a determination of ineligibility.
  - 1. Excess Resources. That portion of the liquid assets or other resources of the individual or family group in excess of the amounts which may be retained for the individual or family group's security and personal use, not exempted from consideration or otherwise accounted for by special specified circumstances, and which result in a determination of ineligibility.
  - 2. Spenddown. The process by which excess income is utilized for recognized medical expenses and which, when depleted, results in a determination of eligibility if all other eligibility factors are met.
- (j) Families First (FF) - Tennessee's TANF program (Temporary Assistance for Needy Families) which provides cash assistance to families with dependent children. [42 U.S.C. §§ 601 et seq.]
- (k) Inpatient services. Those services rendered for any acute or chronic condition, including maternal and mental health care, which cannot be rendered on an outpatient basis.
- (l) Joint Custody - Legal custody of a child held simultaneously by two or more caretaker relatives. The caretaker relatives must exercise care and control of the child.
- (m) Level I care. Level I care is health care in a nursing facility which is more than room and board, but is less than skilled nursing care. (Level I care was formally called I.C.F. - Intermediate Care Facility).
- (n) Level II care. Level II care is health care in a nursing facility which is a higher level of care than Level I, but less than inpatient hospitalization. (Level II care was formally called Skilled Nursing Care.)
- (o) Medicaid. The State program of medical assistance as administered by the Department in compliance with Title XIX of the Social Security Act [42 U.S.C. §§ 1396 et seq.] and which is designed to provide for the medical care needs of Tennessee's medically indigent citizenry.
- (p) Medical assistance drug list. A listing of drugs covered under the Medical Assistance Program, which includes the drug code, description, dosage strength, covered unit form, maximum dosage covered, and per unit price.

- (q) Medically Needy – Individuals whose income or resources are under a certain limit and allows them to qualify for Medicaid by spending down their medical expenses.
- (r) Medicare. The Federal program under Title XVIII of the Social Security Act [42 U.S.C. §§ 1395 et seq.] providing medical benefits to persons receiving Social Security Retirement payments or who have received Social Security benefits based on disability for a period of twenty-four (24) consecutive months.
  - 1. Part A of Title XVIII. Hospital Insurance Benefits provides hospital care, nursing home care, and home health visits, subject to deductibles and co-insurance. [42 U.S.C. § 1395c]
  - 2. Part B of Title XVIII. Supplementary Medical Insurance provides additional medical benefits to those persons eligible for Part A or any person sixty-five (65) years of age, but only if enrolled in the program and paying the monthly premium. [42 U.S.C. § 1395j]
- (s) Nursing Facility (NF). A facility certified by the State to provide nursing care in what was formally called Intermediate Care Facility (I.C.F.) and Skilled Nursing Facility (S.N.F.).
- (t) Outpatient services. Services provided, in other than inpatient circumstances, for any condition detrimental to the individual recipient's physical or mental health which cannot be taken care of in the home situation.
- (u) Poverty Groups – Assistance groups whose gross income does not exceed various percentages of the Federal Poverty Level Income Standard.
- (v) Qualified Disabled and Working Individual (QDWI) – A person who is under age 65 who has lost their Medicare Part A coverage because they returned to work, despite their disability, and have an option to purchase Medicare Part A for an indefinite period and for whom Medicaid pays the Medicare Part A, if income is not more than 200% of the federal poverty level and resources are not more than twice the SSI limit (\$4,000 for an individual, \$6,000 for a couple) and is not otherwise eligible for Medicaid,.
- (w) Qualified Long Term Care Insurance Policy – A long term care insurance policy issued on or after October 1, 2008, that has been pre-certified by the Tennessee Department of Commerce and Insurance pursuant to State Rule 0780-01-61as:
  - 1. A policy that meets all applicable Tennessee Long Term Care Partnership requirements; or
  - 2. A policy that has been issued in another Partnership state and which is covered under a reciprocal agreement between such other state and the State of Tennessee.
- (x) Qualified Medicare Beneficiary (QMB) – A person who is eligible for Medicare Part A and for whom Medicaid pays the Medicare premium, coinsurance and deductible for Medicare covered services and whose income is not more than 100% of the federal poverty level and resources are not more than twice the SSI resource limit (\$4,000 for an individual and \$6,000 for a couple).

- (y) Qualifying Individuals 1 (QI1) (also referred to as a Specified Low-Income Beneficiary (SLIB)) – A person who is eligible on a "first come first serve basis" for Medicaid to pay the Medicare Part B premium, if the individual is eligible to receive Part A Medicare, is not otherwise eligible for Medicaid and income is not more than 135% of the federal poverty level and resources are not more than twice the SSI resource limit (\$4,000 for an individual and \$6,000 for a couple).
- (z) Specified Low-Income Medicare Beneficiary (SLMB) - A person who is eligible for Medicare Part A and for whom Medicaid pays Medicare Part B premiums, if income is not more than 120% of the federal poverty level and resources are not more than twice the SSI limit (\$4,000 for an individual, \$6,000 for a couple).
- (aa) Supplemental Security Income (SSI) – A federal income supplement program funded by general tax revenues and is designed to help aged, blind and disabled individuals who have little or no income. Applications for SSI benefits are filed at the Social Security office. Individuals who are eligible for SSI are automatically entitled to Medicaid. [42 U.S.C. §§ 1382 et seq.]
- (bb) Temporary Assistance for Needy Families (TANF) – Program which was created by the Welfare Reform Law of 1996. TANF became effective July 1996 and replaced what was then commonly known as the AFDC program. [42 U.S.C. §§ 601 et seq.]

Authority: T.C.A. §§ 4-5-201 et seq., 4-5-202, 71-1-105(12), 71-3-153, 71-3-158(d)(2)(D), 71-5-101, 71-5-103 and 71-5-111; Acts 2007, Ch 31, § 11; 42 U.S.C. § 423, 42 U.S.C. §§ 601 et seq.; 42 U.S.C. §§ 1382 et seq.; 42 U.S.C. §§ 1395 et seq.; 42 U.S.C. § 1395i-2a] 42 U.S.C. §§ 1396 et seq., 42 U.S.C. § 1396a(a)(10)(E); 42 U.S.C. § 1396a(e)(4); 42 U.S.C. § 1396d(p)(1), (2) and (3), 42 U.S.C. § 1396d(s); 42 U.S.C. § 1396p(b)(1)(C)(iii) and (b)(5), 42 U.S.C. § 1396r and 42 U.S.C. § 1396u-1; 42 C.F.R. § 435.4; 45 C.F.R. § 233.90(c); PL 101-508 § 5103(e); PL 98-21 § 134, PL 100-203 § 9116, PL 104-193, and PL 109-171 § 6021; and TennCare II Medicaid Section 1115 Demonstration Waiver.

Chapter 1240-03-02  
Coverage Groups Under Medicaid  
Amendments

Rule 1240-03-02-.02 Coverage of the Categorically Needy, is amended by deleting Subparagraph (n) under Paragraph (2) in its entirety to insert the term "Specified" in the place of "Special", so that, as amended, Paragraph (2), Subparagraph (n) shall read as follows:

Effective January 1, 1998, individuals who meet eligibility requirements for Specified Low-Income Beneficiaries (SLIB) except that income is greater than one hundred twenty percent (120%) of federal poverty guidelines, but not greater than one hundred thirty five percent (135%) may be eligible for state buy-in of Part B Medicare premiums, if not currently eligible for or receiving Medicaid or TennCare on "first come, first served" basis up to the State's allocation of federal funds. This group is referred to as Qualifying Individuals 1 (QI1).

Rule 1240-03-02-.02 Coverage of the Categorically Needy, is amended by deleting Subparagraph (r) under Paragraph (2) in its entirety, and by substituting the following language, so that, as amended, Paragraph (2), Subparagraph (r) shall read as follows:

- (r) Qualified Medicare Beneficiaries who are entitled to Medicare Part A may be eligible for a State buy-in of their Medicare premiums, coinsurance and deductibles, if their resources do not exceed two hundred percent (200%) of the SSI resource limit for an individual or couple, as provided at 42 USC § 1382b and whose incomes do not exceed one hundred percent (100%) of the current federal poverty guidelines.

Rule 1240-03-02-.02 Coverage of the Categorically Needy, is amended by deleting Subparagraph (u) under Paragraph (2) in its entirety, and by substituting the following language, so that, as amended, Paragraph (2), Subparagraph (u) shall read as follows:

- (u) Specified Low-Income Medicare Beneficiaries (SLMB) who meet all of the requirements for Qualified Medicare Beneficiaries (QMB) but whose incomes are greater than one hundred percent (100%) but not greater than one hundred twenty (120%) of the current federal poverty guidelines may be eligible for state payment of their Part B (medical insurance ) Medicare premiums if not Medicaid eligible.

Authority: T.C.A. § 4-5-201 et seq., 4-5-202, 71-1-105(12), 71-3-158(d)(2)(D), 71-5-102, 71-5-106, and 71-5-109; Acts 2007, Chapter 31 § 11; 8 U.S.C. §§ 1611, 1612, 1613 and 1641, 42 U.S.C. § 423 note, 42 U.S.C. § 608(a)(2), 42 U.S.C. § 608(a)(6), 42 U.S.C. § 608(a)(11), 42 U.S.C. § 672(h), 42 U.S.C. § 673(b), 42 U.S.C. § 1315, 42 U.S.C. §§ 1382 et seq., 42 U.S.C. §§ 1396 et seq., 42 U.S.C. § 1396a(a)(10)(A)(i), 42 U.S.C. § 1396a(a)(10)(A)(i)(IV), 42 U.S.C. § 1396a(a)(10)(E); 42 U.S.C. § 1396a(e)(1)(A), 42 U.S.C. § 1396a(e)(4)(5) and (6), 42 U.S.C. 1396a(l)(1)(D), 42 U.S.C. § 1396a(aa), 42 U.S.C. 1396b(v)(1), 42 U.S.C. § 1396d(p)(1),(2) and (3), 42 U.S.C. § 1396d(s), 42 U.S.C. § 1396n(c), 42 U.S.C. § 1396r, 42 U.S.C. § 1396r-6, 42 U.S.C. § 1396u-1; 20 C.F.R. 416.1205(c); 42 C.F.R. §§ 435.4, 435.100, 42 C.F.R. 435.200, and 42 C.F.R. 435.831; PL 94-566 §503; PL 98-21 §134; PL 99-509 §9401; PL 100-203 §9116; PL 101-508 §5103(e), PL 104-193 §§103 and 431 and PL 109-171 § 6036 and 7101; and 71 FR 39214 (July 6, 2006).

Chapter 1240-03-03  
Technical and Financial Eligibility  
Requirements for Medicaid

Amendments

Rule 1240-03-03-.03 Resource Limitations for Categorically Needy, is amended by deleting Paragraph (2) only, to insert the term "Specified" in the place of "Special". Subparagraphs (a) and its parts, subparts, items and subitems and Subparagraphs (b) and (c) under Paragraph (2) are not being amended and shall remain as they currently exist. As amended Paragraph (2) shall read as follows:

- (2) Applicants for medical assistance as Categorically Needy in an SSI-related category are permitted to retain resources in an amount not to exceed SSI limits except for Qualified Medicare Beneficiaries (QMBs), Specified Low-Income Medicare Beneficiaries (SLMBs), Specified Low-Income Beneficiaries (SLIBs) Qualifying Individuals 1 (QI1), and Qualified Disabled Working Individuals who are permitted to retain resources in an amount not to exceed two hundred percent (200%) of the SSI limits.

Rule 1240-03-03-.03 Resource Limitations for Categorically Needy, is amended to add some authorities and to delete some obsolete authorities in the Authority section under the Rule, so that as amended, the Authority section under Rule 1240-03-03-.03 shall read as follows:

Authority: T.C.A. §§ 4-5-201 et seq., 4-5-202, 71-1-105(11) and (12), 71-5-102, 71-5-106, 71-5-111, and 71-5-121; 26 U.S.C. §§ 408 and 408A, 42 U.S.C. § 1382(a)(1)(B), 42 U.S.C. § 1382b, 42 U.S.C. §§ 1396 et seq., 42 U.S.C. § 1396d(p) and (s), 42 U.S.C. § 1396p, 42 U.S.C. § 1396p(c)(1)(A), (B), (C), (D), (E), (E)(iv), (F), (G), (H), (I) and (J), 42 U.S.C. § 1396p(c)(2)(D), 42 U.S.C. § 1396p(d)(4)(B), 42 U.S.C. § 1396p(d)(5) and 42 U.S.C. § 1396p(e)(1),(2),(3) and (4), 42 U.S.C. § 1396p(f)(1), (2), (3) and (4), 42 U.S.C. § 1396p(g), 42 U.S.C. § 1396r-5(b), (c), (d), (f) and (g), and 42 U.S.C. § 1396r-5(d)(6) and (e); 20 C.F.R. §§ 416.1205(c), 416.1212, 416.1220, 416.1222 and 416.1224; 42 C.F.R. § 435.601 and 435.602, 42 C.F.R. §§ 435.700, 435.725, 435.735, 435.831, 435.832, 435.840, 435.845, and 435.914 (b) and (c); 45 C.F.R. § 233.20; PL 97-248, PL 98-369 § 2611, PL 99-509 § 9401(a)(3), PL 101-239 Omnibus Reconciliation Act (OBRA) 1989 § 8014 and PL 103-66 OBRA 1993, Title XIII, Chapter 2, Subchapter B, Part II, § 13611, PL 104-193, and PL 109-171 §§ 6011, 6012, 6013, 6014, 6015, and 6016.

Rule 1240-03-03-.04 Income Limitations for the Categorically Needy, is amended by deleting Paragraph (2) in its entirety to remove obsolete code references. Subparagraphs (a) and (b) under Paragraph (2) are not being amended and shall remain as they currently exist. As amended, Paragraph (2) shall read as follows:

- (2) Except as otherwise provided in paragraph (3) of this rule, SSI-related coverage groups are subject to income definitions and exclusions from income and policies as provided in 42 C.F.R. § 435.725, 42 C.F.R. 435.1005, 42 U.S.C. § 1382a and at 20 C.F.R. Part 416, Subpart K Income.

Rule 1240-03-03-.04 Income Limitations for the Categorically Needy, is amended by deleting Subparagraph (c) under Paragraph (2) in its entirety. Subparagraphs (d) through (e) under Paragraph (2) are not being amended and shall remain as they currently exist. As amended, Subparagraph (c) under Paragraph (2) shall read as follows:

- (c) Qualified Medicare Beneficiaries may be income eligible if such an individual's total income does not exceed one hundred percent (100%) of Federal Poverty Guidelines.



Rule 1240-03-03-.04 Income Limitations for the Categorically Needy, is amended by deleting Subparagraph (f) under Paragraph (2) in its entirety to insert the term "Specified" in the place of "Special". Subparagraphs (g) through (h) under Paragraph (2) are not being amended and shall remain as they currently exist. As amended, Subparagraph (f) under Paragraph (2) shall read as follows:

- (f) Specified Low-Income Medicare Beneficiaries (SLMB) may be income eligible, if the individual's income does not exceed 120% of Federal Poverty Guidelines.

Authority: T.C.A. §§ 4-5-201 et seq., 4-5-202, 71-1-105(12), 71-5-102, 71-5-106, 71-5-111, 71-5-140, and 71-5-147; 42 U.S.C. § 1302, 42 U.S.C. § 1382a, 42 U.S.C. § 1382b, 42 U.S.C. §§ 1396a(a)(10), 1396a(a)(50) and (51), and 1396a(1), (q) and (r); 42 U.S.C. § 1396d(p) and (s), 42 U.S.C. § 1396r-5, 42 U.S.C. §§ 1396r-5(b) and 5(d)(3)(B) and (C); 42 C.F.R. §§ 435.700, 435.725, 435.726, 435.735, and 435.845; PL 99-272, PL 100-360 § 301, and PL 100-360 § 303.

I certify that the information included in this filing is an accurate and complete representation of the intent and scope of rulemaking proposed by the agency.

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

Name of Officer: Phyllis Simpson

Title of Officer: Assistant General Counsel

Subscribed and sworn to before me on: \_\_\_\_\_

Notary Public Signature: \_\_\_\_\_

My commission expires on: \_\_\_\_\_

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\_\_\_\_\_  
Tre Hargett  
Secretary of State